

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1771V

UNPUBLISHED

CARIANA M. FORBUSH as
administrator for ESTATE OF KRISTI
A. BAKER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 20, 2021

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Simina Vourlis, Law Offices of Simina Vourlis, Columbus, OH, for Petitioner.

Steven Santayana, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On November 18, 2019, this petition for compensation was filed under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that Kristi A. Baker suffered right shoulder injuries related to vaccine administration (“SIRVA”) as a result of a November 23, 2017 influenza vaccine. Petition at 1-7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 12, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 20, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$130,750.30. Proffer

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

at 3. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$130,750.30 (comprised of \$107,500.00 for pain and suffering, \$2,524.97 for past out-of-pocket expenses, \$980.00 in estate costs, and \$19,745.33 in past lost wages) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

was appointed administrator of the original petitioner's estate following her death on October 19, 2020. ECF No. 40 at 1.

Items of Compensation

Pain and Suffering

Respondent proffers that petitioner should be awarded \$107,500.00 in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

Past Out-of-Pocket Expenses

Evidence supplied by petitioner documents that she incurred past out-of-pocket expenses related to the vaccine-related injury. Respondent proffers that petitioner should be awarded past out-of-pocket expenses in the amount of \$2,524.97. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

Estate Costs

Respondent proffers that petitioner should be awarded \$980.00 in estate costs. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

Lost Wages

Respondent proffers that petitioner should be awarded \$19,745.33 in past lost wages. *See* 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and

the Court's judgment award the following¹: a lump sum **payment of \$130,750.30**, in the form of a check payable to petitioner.

Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Cariana Forbush: **\$130,750.30**

Respectfully submitted,

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/s/ Steven C. Santayana
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Date: December 20, 2021

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.